(2)

No. **99-1121**

In The
SUPREME COURT OF THE UNITED STATES

HECTOR V. LUNA, - PETITIONER
In pro se

VS.

COUNTY OF SAN BERNARDINO - RESPONDENT(S)
AND ITS PRIVITIES, THE SAN BERNARDINO COUNTY RETIREMENT BOARD.

ON THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL BRIEF TO PLAINTIFF'S PETITION FOR A WRIT OF CERTIORARI, UNDER RULE 15 SUBD. 8.

Hector V. Luna
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8 PP

Under BLACK'S LAW DICTIONARY, 7th edition, a waiver constitutes: "the intentional relinquishment by a maker, drawer, or other obligor *under a contract* of the right to assert against the assignee any claim or defenses the obligor has against the assignor. The party alleged to have *waived* a right must have had both knowledge of the existing right and the intention of forgoing it.

Under, federal case law precedent, Postal Tele. Cable v. City of Newport 38 U.S. Supreme Court Reporter (1918) 566(2) reads: "where a case was submitted and decided on the pleadings, every uncontridicted allegation of fact by the unsuccessful party *must* be taken as true.

Under, federal case law precedent, Supreme Court Reporter 112B, 1272 (1992) at p.1273(1) reads: on Appeal of grant of summary judgment, nonmovement's evidence is to be believed, and all justifiable inference are to be drawn in its favor. Civ.proc. rule 56(c) 28 U.S.C.A..

Appellee's waiver constitutes a conclusion on Appellees *own* act to closeth-up the mouth, raising a new strategy of silence in order to win in the instant case.

Unlike Appellees intense opposition against plaintiff's allegations before the 9th Cir. Court of appeal's panel, as shown on Appellees April 14, 1999 brief. (Appendix "A" attached on p.1a) The Appellees April 14, 1999 brief was believed by the 9th cir. Panel, and the dismissal prevailed.

The appellee's new raised strategy of silence allows plaintiff the right to address this new matter pursuant to rule 15(8).

The plaintiff's well-pleaded factual allegations are on the record, that he is legally entitled to a service-connected disability retirement pension under the pension plan. And, also entitled to the supplemental benefit. (see page 3 par. 3 of petition). The *loss* of pension benefits of over $600.00 per month retroactive to November 1981, shows respondent's capricious and arbritary bad faith actions against plaintiff which has impaired the contract obligation between the parties.

In other words, the County Appellee new silent strategy for not paying the money owe to plaintiff on pension benefits is for this court to dismiss the instant case on the basis of a waiver action. Therefore, plaintiff asserts that this court should take judicial notice that the respondent has elected not to file a response in the instant case (Appendix "B" attached p. 3a) as such, respondent has waived all defenses and is estopped from asserting any defenses and under the Federal rules of civic procedure 56, all the well-pleaded allegations made by the plaintiff must be accepted as true

and correct and judgment held in favor of this plaintiff under the uniformity of rule 56.

The impairment of contract obligation by Appellee against the plaintiff, in violation of the contract clauses of the federal clauses of the federal and state constitution's U.S. Const. Art.1 sec.10 cl.1; Cal. Const. Art.1, sec.9 should not be allowed by this court.

DATED: February 8, 2000

Respectfully Submitted,

Hector Luna

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San Bernardino, CA 92411

APPENDIX A - BRIEF BY RESPONDENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HECTOR V. LUNA,	)	CASE NO. 98-55762
Plaintiff/Appellant,	)	CV-97-08874-ABC
	)	
vs.	)	
	)	
THE COUNTY OF SAN	)	
BERNARDINO AND ITS PRIVITIES,		
Defendants/Appellees.	)	

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
HONORABLE AUDREY B. COLLINS, JUDGE PRESIDING

COUNTY OF SAN BERNARDINO'S OPPOSITION TO APPELLANT'S ADDENDUM TO APPELLANT'S BRIEF

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HECTOR V. LUNA,	)	CASE NO. 98-55762
Plaintiff/Appellant,	)	CV-97-08874-ABC
	)	COUNTY OF SAN
vs.	)	BERNARDINO'S
	)	OPPOSITION TO
THE COUNTY OF SAN	)	APPELLANT'S ADDEN-
BERNARDINO & ITS PRIVITIES	)	DUM TO APPELANT'
	)	BRIEF

COMES NOW Respondent, COUNTY OF SAN BERNARDINO, offering this brief opposition to Appellant's Addendum filed on March 17, 1999.

The case to which Mr. Luna wishes this court to consider has nothing to do with the issue before the court. The decision of Phillips v. County of Fresno, (1990) Cal.App.3d 1240, concerns a state cause of action for administrative mandamus brought pursuant to California Government Code section 31725, seeking reinstatement as a remedy.

The subject case involves a 42 U.S.C. 1983 action seeking damages and attorney fees. Hence, it is not the same cause of action, seeking different remedies, as the cause of action referred to in Phillips, and therefore, the decision is irrelevant to this case.

DATED: April 14, 1999

ALAN K. MARKS
County Counsel

_____
MATTHEW J. MARNELL
Deputy County Counsel
Attorney for Defendants/Appellees,
COUNTY OF SAN BERNARDINO

APPENDIX B - RESPONDENT WAIVER ACTION

WAIVER

SUPREME COURT OF THE UNITED STATES

Supreme Court Case No. 99-1121

Hector V. Luna v. County of San Bernardino, et.al.

(Petitioner) (Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check one of the following boxes:

☒ Please enter my appearance as Counsel of Record for all respondents.

☐ There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

_____

_____

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain if your name has changed since your admission):

Signature _____

Date: January 18, 2000

(Type or print) Name Alan L. Green

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm San Bernardino County Counsel

Address 385 North Arrowhead Ave., Fourth floor

City & State San Bernardino, CA Zip 92415-0140

Phone (909) 387-5288

A COPY OF THIS FORM MUST BE SENT TO PETITIONER'S COUNSEL OR TO PETITIONER IF *PRO SE*. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

SEE REVERSE FOR INFORMATION CONCERNING' THE STATUS OF A CASE ON THE DOCKET.

No. 99-1121

IN THE

SUPREME COURT OF THE UNITED STATES

HECTOR V. LUNA, - PETITIONER

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COUNTY OF SAN BERNARDINO - RESPONDENT(S)
& ITS PRIVITIES, THE SAN BERNARDINO
COUNTY RETIREMENT BOARD.

PROOF OF SERVICE

I, Alma Guadalupe L., do swear or declare that on this date, Feb. 8, 2000, as required by Supreme Court Rule 29. I have served the enclosed SUPPLEMENTAL BRIEF UNDER RULE 15 SUBD. 8. each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid.

The names and addresses of those served are as follows:

San Bernardino County, County Counsel	385 N. Arrowhead Ave. 4th Fl. San Bernardino, CA 92415
WCAB	45 Freemont St. Room 410 San Francisco, CA 94105
County Employees' Retirement Assoc.	195 N. Arrowhead Ave. San Bernardino, CA 92415

I declare under penalty of perjury that the foregoing is true and correct.
Executed on Feb. 8, 2000

(Signature)